

RECORDATION NO. 14425-A

RECORDATION NO. 14425-B

SEP 14 1984 12 50 PM

SEP 14 1984 12 50 PM

**Barclays  
American  
Leasing**

RECORDATION NO. 14425-A

SEP 14 1984 12 50 PM

INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

201 South Tryon Street

P. O. Box 31217

Charlotte, North Carolina 28231

704 / 372-5210

RECORDATION NO. 14425-C

4-258A060

September 13, 1984

SEP 14 1984 12 50 PM

INTERSTATE COMMERCE COMMISSION

No. SEP 14 1984

Date .....

Fee \$ 40.00

ICC Washington, D. C.

James H. Bayne  
Secretary, Interstate Commerce Commission  
12th and Constitution Avenue, NW  
Washington, DC 20423

Dear Secretary:

I have enclosed two original copies of the documents described below to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

The documents are as follows:

1. Conditional Sale Agreement, a primary document dated as of August 20, 1984;
2. Agreement and Assignment, a secondary document dated as of August 20, 1984;
3. Lease of Railroad Equipment, a primary document dated as of August 20, 1984; and
4. Assignment of Lease and Agreement, a ~~primary~~ <sup>KAG</sup> document dated as of August 20, 1984.

We request that the assignment agreements be cross-indexed.

The names and addresses of the parties to the documents are as follows:

1. Conditional Sale Agreement

Vendor: ACF Industries Incorporated  
750 Third Avenue  
New York, NY 10017

and

Purchaser: BarclaysAmerican/Leasing, Inc.  
201 South Tryon Street  
Charlotte, NC 28202

SEP 14 12 46 PM '84  
MOTOR VEHICLE UNIT

ICC OFFICE OF  
THE SECRETARY

James H. Bayne  
Secretary, Interstate Commerce Commission  
September 13, 1984  
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2. Agreement and Assignment

Assignor: ACF Industries Incorporated  
750 Third Avenue  
New York, NY 10017

and

Assignee: Barclays Bank International Limited  
1800 First Atlanta Tower  
Two Peachtree Street  
Atlanta, GA 30383

3. Lease of Railroad Equipment

Lessor: BarclaysAmerican/Leasing, Inc.  
201 South Tryon Street  
Charlotte, NC 28202

and

Lessee: Badische Corporation  
Route 60 East  
P. O. Drawer D  
Williamsburg, VA 23185

4. Assignment of Lease and Agreement

Assignor: BarclaysAmerican/Leasing, Inc.  
201 South Tryon Street  
Charlotte, NC 28202

and

Assignee: Barclays Bank International Limited  
1800 First Atlanta Tower  
Two Peachtree Street  
Atlanta, GA 30383

A description of the equipment covered by the documents is as follows:

Sixteen, 5000 cubic foot center flow type LO covered hopper cars equipped with 100 ton roller bearing trucks, 10 lb. pressure cars constructed by ACF Industries Incorporated, AAR Mechanical Designation: LO and Identification Numbers (both inclusive) DBCX 33~~4~~349.

James H. Bayne  
Secretary, Interstate Commerce Commission  
September 13, 1984  
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A fee of <sup>40.00</sup>~~\$160.00~~ is enclosed. Please return the original documents to Credit and Administration Director, BarclaysAmerican/Leasing, Inc., 201 South Tryon Street, P. O. Box 31217, Charlotte, North Carolina 28231.

A short summary of the documents to appear in the index is as follows:

1. Primary Documents

- . Conditional Sale Agreement dated as of August 20, 1984 between ACF Industries Incorporated, 750 Third Avenue, New York, NY 10017, as vendor, and BarclaysAmerican/-Leasing, Inc., 201 South Tryon Street, Charlotte, NC 28202, as purchaser, covering sixteen, 5000 cubic foot center flow type LO covered hopper cars bearing identification numbers DBCX 334-349 inclusive.
- . Lease of Railroad Equipment dated as of August 20, 1984 between BarclaysAmerican/Leasing, Inc., 201 South Tryon Street, Charlotte, NC 28202, as lessor, and Badische Corporation, Route 60 East, P. O. Drawer D, Williamsburg, VA 23185, as lessee, covering sixteen, 5000 cubic foot center flow type LO covered hopper cars bearing identification numbers DBCX 334-349 inclusive.
- . Assignment of Lease and Agreement dated as of August 20, 1984 between BarclaysAmerican/Leasing, Inc., 201 South Tryon Street, Charlotte, NC 28202, as assignor, and Barclays Bank International Limited, 1800 First Atlanta Tower, Two Peachtree Street, Atlanta, GA 30383, as assignee, wherein BarclaysAmerican/Leasing, Inc. assigned to Barclays Bank International Limited certain of its rights and interests in that certain lease agreement dated as of August 20, 1984 between BarclaysAmerican/-Leasing, Inc. and Badische Corporation and the proceeds thereof covering sixteen, 5000 cubic foot center flow type LO covered hopper cars bearing identification numbers DBCX 334-349 inclusive.

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Secretary, Interstate Commerce Commission  
September 13, 1984  
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2. Secondary Document

- . Agreement and Assignment dated as of August 20, 1984 between ACF Industries Incorporated, 750 Third Avenue, New York, NY 10017, as assignor, and Barclays Bank International Limited, 1800 First Atlanta Tower, Two Peachtree Street, Atlanta, GA 30383, as assignee, wherein ACF Industries Incorporated assigned certain of its rights and interests in that certain Conditional Sale Agreement dated as of August 20, 1984 between BarclaysAmerican/Leasing, Inc., 201 South Tryon Street, Charlotte, NC 28202 and ACF Industries Incorporated covering sixteen, 5000 cubic foot center flow type LO covered hopper cars bearing identification numbers DBCX 334-349 inclusive.

Very truly yours,



M. D. Gira  
Senior Vice President  
Credit and Administration Director

MDG:pss

Enclosures

RECORDATION NO. 14425-A Filed 1425

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INTERSTATE COMMERCE COMMISSION

EXHIBIT B  
to  
Participation Agreement

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AGREEMENT AND ASSIGNMENT

Dated as of August 20, 1984

Between

ACF INDUSTRIES, INC.

and

BARCLAYS BANK INTERNATIONAL LIMITED

---

Filed with the Interstate Commerce Commission pursuant to 49 U.S.C. Section 11303 on \_\_\_\_\_.

AGREEMENT AND ASSIGNMENT dated as of August 20, 1984, between ACF INDUSTRIES, INCORPORATED, a New Jersey corporation ("ACF"), and BARCLAYS BANK INTERNATIONAL LIMITED, a banking corporation organized and existing under and by virtue of the laws of England operating as an agency in Atlanta, Georgia pursuant to the laws of the state of Georgia ("Bank").

ACF and BARCLAYSAMERICAN/LEASING, INC. ("Owner"), a North Carolina corporation, have entered into a Conditional Sale Agreement dated as of the date hereof ("CSA") covering the sale and delivery to the Owner by ACF of the railroad equipment described in Annex B to the CSA ("Equipment").

BADISCHE CORPORATION ("Lessee") and the Owner have entered into a Lease of Railroad Equipment dated as of the date hereof ("Lease") providing for the lease of the Equipment to the Lessee, and the Owner and the Bank have entered into an Assignment of Lease and Agreement dated as of the date hereof ("Lease Assignment") providing for the assignment of the Lease to the Bank.

In consideration of the agreements hereinafter set forth, the parties hereto hereby agree as follows:

SECTION 1. ACF hereby transfers and assigns to the Bank, its successors and assigns:

(a) all the right, title and interest of ACF in and to each unit of Equipment when and as severally delivered to and accepted by the Owner, subject to payment by the Bank to ACF of the amount required to be paid pursuant to Section 4 hereof;

(b) all the right, title and interest of ACF in and to the CSA (except the right to receive the payments specified in Section 4.3(a) thereof and reimbursement for taxes paid or incurred by ACF) and (except as aforesaid) in and to any and all amounts which may be or become due or owing to ACF under the CSA on account of the indebtedness in respect of the Purchase Price (as defined in Section 4.1 of the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Owner under the CSA, other than those hereinabove excluded; and

(c) except as limited by subsection (b) of this Section, all ACF's rights, titles, powers, privileges and remedies under the CSA;

without any recourse hereunder, however, against ACF for or on account of the failure of the Owner to make any of the payments provided for in the CSA or otherwise to comply with any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Bank to or transfer or in any way affect or modify the obligations of ACF to deliver the Equipment in accordance with the CSA or with respect to warranties and agreements referred to in Article 2 or Article 14 of the CSA or relieve the Owner from its obligations to ACF contained in the CSA, it being agreed that all obligations of ACF with respect to the Equipment shall be and remain enforceable by the Owner and its successors and assigns against and only against ACF. ACF hereby authorizes and empowers the Bank in the Bank's own name or in the name of the Bank's nominee or in the name of and as attorney for ACF, hereby irrevocably constituted, to demand, sue for, collect and receive any and all sums to which the Bank is or may become entitled under this Assignment and to enforce compliance by the Owner with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Bank.

SECTION 2. ACF agrees that the Equipment shall be constructed in full accordance with the CSA. ACF agrees to deliver the Equipment upon completion to the Owner in accordance with the provisions of the CSA and, notwithstanding this Assignment, to fully perform each of and all the covenants and conditions of the CSA set forth to be performed by ACF. ACF

further agrees that it will warrant to the Owner and the Bank that, at the time of delivery by ACF of each unit of Equipment under the CSA, it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Owner, the Bank and the Lessee (and those persons claiming by, through or under the Owner, the Bank and the Lessee); and ACF further agrees that it will defend the title to such unit against the demands of all persons whomsoever (other than the Owner, the Lessee and the Bank, and persons claiming by, through or under the Owner, the Lessee or the Bank) based on claims originating prior to the delivery of such unit by it under the CSA; all subject, however, to the provisions of the CSA. ACF will not delivery any of the Equipment to the Owner under the CSA until the CSA, the Lease, this Assignment and the Lease Assignment have been filed with the Interstate Commerce Commission pursuant to 49 U.S.C. Section 11303 (ACF and its counsel being entitled to rely on advice from counsel for the Bank that such filing has occurred).

SECTION 3. ACF agrees with the Bank that in any suit, proceeding or action brought by the Bank under the CSA for any installment of indebtedness or interest thereon in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, ACF will indemnify, protect and hold harmless the Bank from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Owner or the Lessee arising out of a breach by ACF of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Owner or the Lessee by ACF (in which latter case, ACF will be subrogated to any claim of the Bank against the Owner or the Lessee, as the case may be, with respect to the matter indemnified against). ACF's obligation so to indemnify, protect and hold harmless the Bank is conditional upon (a) the Bank's timely motion or other appropriate action, on the basis of Article 15 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Owner or the Lessee in any such suit, proceeding or action and (b)

if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Bank's prompt notification to ACF of the asserted defense, setoff, counterclaim or recoupment and the Bank's giving ACF the right, at ACF's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Owner or the Lessee and not manufactured by ACF and in cases of designs, processes or combinations specified by the Lessee and not developed by ACF, ACF agrees, to the extent provided in Annex A to the CSA and except as otherwise specifically provided in Annex A to the CSA, to indemnify, protect and hold harmless the Bank from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Bank or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, process, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Bank will give prompt notice to ACF of any claim actually known to the Bank which is based upon any such alleged infringement and will give to ACF the right, at ACF's expense, to compromise, settle or defend against such claim. ACF agrees that any amounts payable to it by the Owner or the Lessee with respect to the Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Bank, shall not be secured by any lien, charge or security interest upon such Equipment or any unit thereof.

SECTION 4. The Bank (as provided in Section 4.2 of the CSA) shall pay to ACF on the Closing Date an amount equal to the portion of the Purchase Price of the Equipment then being settled for as shown on the invoice therefor, which under the terms of Section 4.3(b) of the CSA, is payable in installments; provided that the conditions specified in Articles VII of the Participation Agreement have been satisfied and there shall have been delivered to the Bank, on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to Bank's counsel, in such number of counterparts as may be reasonably requested by said counsel:

(a) a bill or bills of sale from ACF to the Owner transferring to the Owner, all right, title and interest of ACF (subject to the security interest transferred to the Bank pursuant hereto), warranting to the Owner and to the Bank that, at the time of delivery of such units to the Owner by ACF under the CSA, ACF had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and any other encumbrances of any nature except only the rights of the Owner under the CSA, the Bank under this Assignment, and the Lessee under the Lease, and those arising by, through or under the Owner, the Bank or the Lessee, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units to the Owner by ACF under the CSA;

(b) Certificates of Acceptance on behalf of the Owner and the Lessee with respect to such units as contemplated by Section 3.4 of the CSA and Section 2 of the Lease;

(c) the Invoice (as defined in the CSA) for such units accompanied by or having endorsed thereon a certification by the Owner and the Lessee as to their approval thereof;

(d) an opinion of counsel for ACF, dated as of such Closing Date, addressed to the Bank and the Owner, to the effect that the bills of sale described in subsection (a) above have been duly authorized, executed and delivered by ACF and that the bills of sale, the CSA and this Assignment are valid and effective to vest in the Bank the security interest of ACF in such units, and in the Owner the entire remaining interest of ACF, as the case may be, free from all claims, liens, security interests and other encumbrances other than those of the Owner, the Bank and the Lessee, and those persons claiming by, through or under the Owner, the Bank and the Lessee (counsel for ACF may assume the due authorization, execution and delivery of the CSA and this Assignment by the parties thereto other than ACF);

(e) a receipt from ACF for any payment (other than the payment being made by the Bank pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to ACF with respect to such units, unless such payment is made by the Bank with funds furnished to it for that purpose by the Owner;

(f) such other certificates or opinions as the Bank may reasonably request.

The obligation of the Bank hereunder to make its Investment hereunder is hereby expressly conditioned upon payment by the Owner of the Owner Investment. In the event that the Bank shall not make any such payment, the Bank shall reassign to ACF, without recourse to the Bank, all right, title and interest of the Bank in and to the units of Equipment with respect to which payment has not been made by the Bank.

SECTION 5. The Bank may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Owner thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment and upon giving the written notice required in Article 15 of the CSA, enjoy all the rights and privileges and be subject to all the obligations of the Bank hereunder.

SECTION 6. ACF hereby:

(a) represents and warrants to the Bank, the Lessee, the Owner and their successors and assigns that the CSA and this Assignment were duly authorized by it and lawfully executed and delivered by it for a valid consideration; that, assuming due authorization, execution and delivery by the Owner, the CSA and this Assignment are, insofar as ACF is concerned, legal, valid and binding instruments, enforceable against ACF in accordance with their terms and that they are now in force without amendment thereto;

(b) agrees that it will from time to time, at the request of the Bank, make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts as may be necessary and appropriate to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Bank or intended to be so; and

(c) agrees that, subsequent to the payment in full of the Purchase Price, upon request of the Bank, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of ACF therein or in the Equipment.

(d) warrants to the Bank and to the Owner that, at the time of delivery of such units to the Owner under the CSA, ACF had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Owner, the Bank and the Lessee (and those persons claiming by, through or under the Owner, the Bank and the Lessee), and covenanting to defend the title to such units against demands of all persons whomsoever (other than the Owner, the Bank and the Lessee and persons claiming by, through or under the Owner, the Bank or the Lessee) based on claims originating prior to the delivery of such units to the Owner by ACF under the CSA;

SECTION 7. This Assignment shall be governed by and construed in accordance with the laws of the state of North Carolina; provided, however, that the parties shall be entitled to all the rights conferred by 49 U.S.C. Section 11303, such additional rights arising out of the filing of the CSA and this Assignment as shall be conferred by the laws of the several jurisdictions in which the CSA or this Agreement may be filed or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Bank shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by duly authorized officers as of the date first above written.

ACF INDUSTRIES, INCORPORATED

By: \_\_\_\_\_

[Corporate Seal]

Attest:

\_\_\_\_\_

BARCLAYS BANK INTERNATIONAL LIMITED

By: *Rosa W. Preston*  
By: *[Signature]*

STATE OF                    ,)  
                              ) ss.:  
COUNT OF                 ,)

On this \_\_\_\_ day of \_\_\_\_\_, before me personally appeared

\_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is a \_\_\_\_\_ of ACF INDUSTRIES, INC., a New Jersey corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission Expires: \_\_\_\_\_

STATE OF Georgia ,)  
                              ) ss.:  
COUNTY OF Fulton ,)

On this 21st day of August, before me personally appeared Susan W. Prosten, to me personally known, who, being by me duly sworn, says that she is a Vice President of BARCLAYS BANK INTERNATIONAL LIMITED, a banking corporation organized and existing under and by virtue of the laws of England, that said instrument was signed on behalf of said Corporation by authority of its Board of Directors and she acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Ann C. Covington  
Notary Public

[Notarial Seal]

ANN C. COVINGTON  
Notary Public, Georgia, State at Large  
My Commission Expires: My Commission Expires Feb. 5, 1905

STATE OF Georgia, )  
COUNTY OF Fulton, ) ss.:

On this 31st day of August, before me personally appeared D. G. C. Thomson, to me personally known, who, being by me duly sworn, says that he is a First Vice President of BARCLAYS BANK INTERNATIONAL LIMITED, a banking corporation organized and existing under and by virtue of the laws of England, that said instrument was signed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Ann G. Covington  
Notary Public

[Notarial Seal]

My Commission Expires:

ANN G. COVINGTON  
Notary Public, Georgia, State at Large  
My Commission Expires Feb. 5, 1985

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

BARCLAYSAMERICAN/LEASING, INC. hereby acknowledges receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment as of AUGUST 20, 1984.

BARCLAYSAMERICAN/LEASING, INC.

By: 

EXHIBIT B  
to  
Participation Agreement

---

AGREEMENT AND ASSIGNMENT

Dated as of August 20, 1984

Between

ACF INDUSTRIES, INC.

and

BARCLAYS BANK INTERNATIONAL LIMITED

---

Filed with the Interstate Commerce Commission pursuant to 49 U.S.C. Section  
11303 on \_\_\_\_\_.

AGREEMENT AND ASSIGNMENT dated as of August 20, 1984, between ACF INDUSTRIES, INCORPORATED, a New Jersey corporation ("ACF"), and BARCLAYS BANK INTERNATIONAL LIMITED, a banking corporation organized and existing under and by virtue of the laws of England operating as an agency in Atlanta, Georgia pursuant to the laws of the state of Georgia ("Bank").

ACF and BARCLAYSAMERICAN/LEASING, INC. ("Owner"), a North Carolina corporation, have entered into a Conditional Sale Agreement dated as of the date hereof ("CSA") covering the sale and delivery to the Owner by ACF of the railroad equipment described in Annex B to the CSA ("Equipment").

BADISCHE CORPORATION ("Lessee") and the Owner have entered into a Lease of Railroad Equipment dated as of the date hereof ("Lease") providing for the lease of the Equipment to the Lessee, and the Owner and the Bank have entered into an Assignment of Lease and Agreement dated as of the date hereof ("Lease Assignment") providing for the assignment of the Lease to the Bank.

In consideration of the agreements hereinafter set forth, the parties hereto hereby agree as follows:

SECTION 1. ACF hereby transfers and assigns to the Bank, its successors and assigns:

(a) all the right, title and interest of ACF in and to each unit of Equipment when and as severally delivered to and accepted by the Owner, subject to payment by the Bank to ACF of the amount required to be paid pursuant to Section 4 hereof;

(b) all the right, title and interest of ACF in and to the CSA (except the right to receive the payments specified in Section 4.3(a) thereof and reimbursement for taxes paid or incurred by ACF) and (except as aforesaid) in and to any and all amounts which may be or become due or owing to ACF under the CSA on account of the indebtedness in respect of the Purchase Price (as defined in Section 4.1 of the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Owner under the CSA, other than those hereinabove excluded; and

(c) except as limited by subsection (b) of this Section, all ACF's rights, titles, powers, privileges and remedies under the CSA;

without any recourse hereunder, however, against ACF for or on account of the failure of the Owner to make any of the payments provided for in the CSA or otherwise to comply with any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Bank to or transfer or in any way affect or modify the obligations of ACF to deliver the Equipment in accordance with the CSA or with respect to warranties and agreements referred to in Article 2 or Article 14 of the CSA or relieve the Owner from its obligations to ACF contained in the CSA, it being agreed that all obligations of ACF with respect to the Equipment shall be and remain enforceable by the Owner and its successors and assigns against and only against ACF. ACF hereby authorizes and empowers the Bank in the Bank's own name or in the name of the Bank's nominee or in the name of and as attorney for ACF, hereby irrevocably constituted, to demand, sue for, collect and receive any and all sums to which the Bank is or may become entitled under this Assignment and to enforce compliance by the Owner with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Bank.

SECTION 2. ACF agrees that the Equipment shall be constructed in full accordance with the CSA. ACF agrees to deliver the Equipment upon completion to the Owner in accordance with the provisions of the CSA and, notwithstanding this Assignment, to fully perform each of and all the covenants and conditions of the CSA set forth to be performed by ACF. ACF

further agrees that it will warrant to the Owner and the Bank that, at the time of delivery by ACF of each unit of Equipment under the CSA, it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Owner, the Bank and the Lessee (and those persons claiming by, through or under the Owner, the Bank and the Lessee); and ACF further agrees that it will defend the title to such unit against the demands of all persons whomsoever (other than the Owner, the Lessee and the Bank, and persons claiming by, through or under the Owner, the Lessee or the Bank) based on claims originating prior to the delivery of such unit by it under the CSA; all subject, however, to the provisions of the CSA. ACF will not delivery any of the Equipment to the Owner under the CSA until the CSA, the Lease, this Assignment and the Lease Assignment have been filed with the Interstate Commerce Commission pursuant to 49 U.S.C. Section 11303 (ACF and its counsel being entitled to rely on advice from counsel for the Bank that such filing has occurred).

SECTION 3. ACF agrees with the Bank that in any suit, proceeding or action brought by the Bank under the CSA for any installment of indebtedness or interest thereon in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, ACF will indemnify, protect and hold harmless the Bank from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Owner or the Lessee arising out of a breach by ACF of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Owner or the Lessee by ACF (in which latter case, ACF will be subrogated to any claim of the Bank against the Owner or the Lessee, as the case may be, with respect to the matter indemnified against). ACF's obligation so to indemnify, protect and hold harmless the Bank is conditional upon (a) the Bank's timely motion or other appropriate action, on the basis of Article 15 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Owner or the Lessee in any such suit, proceeding or action and (b)

if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Bank's prompt notification to ACF of the asserted defense, setoff, counterclaim or recoupment and the Bank's giving ACF the right, at ACF's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Owner or the Lessee and not manufactured by ACF and in cases of designs, processes or combinations specified by the Lessee and not developed by ACF, ACF agrees, to the extent provided in Annex A to the CSA and except as otherwise specifically provided in Annex A to the CSA, to indemnify, protect and hold harmless the Bank from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Bank or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, process, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Bank will give prompt notice to ACF of any claim actually known to the Bank which is based upon any such alleged infringement and will give to ACF the right, at ACF's expense, to compromise, settle or defend against such claim. ACF agrees that any amounts payable to it by the Owner or the Lessee with respect to the Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Bank, shall not be secured by any lien, charge or security interest upon such Equipment or any unit thereof.

SECTION 4. The Bank (as provided in Section 4.2 of the CSA) shall pay to ACF on the Closing Date an amount equal to the portion of the Purchase Price of the Equipment then being settled for as shown on the invoice therefor, which under the terms of Section 4.3(b) of the CSA, is payable in installments; provided that the conditions specified in Articles VII of the Participation Agreement have been satisfied and there shall have been delivered to the Bank, on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to Bank's counsel, in such number of counterparts as may be reasonably requested by said counsel:

(a) a bill or bills of sale from ACF to the Owner transferring to the Owner, all right, title and interest of ACF (subject to the security interest transferred to the Bank pursuant hereto), warranting to the Owner and to the Bank that, at the time of delivery of such units to the Owner by ACF under the CSA, ACF had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and any other encumbrances of any nature except only the rights of the Owner under the CSA, the Bank under this Assignment, and the Lessee under the Lease, and those arising by, through or under the Owner, the Bank or the Lessee, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units to the Owner by ACF under the CSA;

(b) Certificates of Acceptance on behalf of the Owner and the Lessee with respect to such units as contemplated by Section 3.4 of the CSA and Section 2 of the Lease;

(c) the Invoice (as defined in the CSA) for such units accompanied by or having endorsed thereon a certification by the Owner and the Lessee as to their approval thereof;

(d) an opinion of counsel for ACF, dated as of such Closing Date, addressed to the Bank and the Owner, to the effect that the bills of sale described in subsection (a) above have been duly authorized, executed and delivered by ACF and that the bills of sale, the CSA and this Assignment are valid and effective to vest in the Bank the security interest of ACF in such units, and in the Owner the entire remaining interest of ACF, as the case may be, free from all claims, liens, security interests and other encumbrances other than those of the Owner, the Bank and the Lessee, and those persons claiming by, through or under the Owner, the Bank and the Lessee (counsel for ACF may assume the due authorization, execution and delivery of the CSA and this Assignment by the parties thereto other than ACF);

(e) a receipt from ACF for any payment (other than the payment being made by the Bank pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to ACF with respect to such units, unless such payment is made by the Bank with funds furnished to it for that purpose by the Owner;

(f) such other certificates or opinions as the Bank may reasonably request.

The obligation of the Bank hereunder to make its Investment hereunder is hereby expressly conditioned upon payment by the Owner of the Owner Investment. In the event that the Bank shall not make any such payment, the Bank shall reassign to ACF, without recourse to the Bank, all right, title and interest of the Bank in and to the units of Equipment with respect to which payment has not been made by the Bank.

SECTION 5. The Bank may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Owner thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment and upon giving the written notice required in Article 15 of the CSA, enjoy all the rights and privileges and be subject to all the obligations of the Bank hereunder.

SECTION 6. ACF hereby:

(a) represents and warrants to the Bank, the Lessee, the Owner and their successors and assigns that the CSA and this Assignment were duly authorized by it and lawfully executed and delivered by it for a valid consideration; that, assuming due authorization, execution and delivery by the Owner, the CSA and this Assignment are, insofar as ACF is concerned, legal, valid and binding instruments, enforceable against ACF in accordance with their terms and that they are now in force without amendment thereto;

(b) agrees that it will from time to time, at the request of the Bank, make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts as may be necessary and appropriate to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Bank or intended to be so; and

(c) agrees that, subsequent to the payment in full of the Purchase Price, upon request of the Bank, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of ACF therein or in the Equipment.

(d) warrants to the Bank and to the Owner that, at the time of delivery of such units to the Owner under the CSA, ACF had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Owner, the Bank and the Lessee (and those persons claiming by, through or under the Owner, the Bank and the Lessee), and covenanting to defend the title to such units against demands of all persons whomsoever (other than the Owner, the Bank and the Lessee and persons claiming by, through or under the Owner, the Bank or the Lessee) based on claims originating prior to the delivery of such units to the Owner by ACF under the CSA;

SECTION 7. This Assignment shall be governed by and construed in accordance with the laws of the state of North Carolina; provided, however, that the parties shall be entitled to all the rights conferred by 49 U.S.C. Section 11303, such additional rights arising out of the filing of the CSA and this Assignment as shall be conferred by the laws of the several jurisdictions in which the CSA or this Agreement may be filed or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Bank shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by duly authorized officers as of the date first above written.

[Corporate Seal]

Attest:

*W. Montgomery*  
ASSISTANT SECRETARY

ACF INDUSTRIES, INCORPORATED

By: *Andrew*  
VICE PRESIDENT

BARCLAYS BANK INTERNATIONAL LIMITED

By: \_\_\_\_\_

By: \_\_\_\_\_

STATE OF NEW YORK , )  
 ) ss.:  
COUNTY OF NEW YORK , )

On this 30<sup>th</sup> day of August, 1984, before me personally appeared

A. L. HUFF, to me personally known, who, being by me duly sworn, says that he is a VICE PRESIDENT of ACF INDUSTRIES, INC., a New Jersey corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Kathleen Mackey  
Notary Public

KATHLEEN MACKAY  
Notary Public, State of New York  
No. 4770405  
Qualified in Westchester County  
Certificate Filed in New York County  
Commission Expires March 30, 1986

[Notarial Seal]

My Commission Expires: March 30, 1986

STATE OF , )  
 ) ss.:  
COUNTY OF , )

On this \_\_\_\_ day of \_\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is a \_\_\_\_\_ of BARCLAYS BANK INTERNATIONAL LIMITED, a banking corporation organized and existing under and by virtue of the laws of England, that said instrument was signed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission Expires: \_\_\_\_\_

STATE OF                   , )  
                              ) ss.:  
COUNTY OF                 , )

On this \_\_\_\_ day of \_\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is a \_\_\_\_\_ of BARCLAYS BANK INTERNATIONAL LIMITED, a banking corporation organized and existing under and by virtue of the laws of England, that said instrument was signed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission Expires: \_\_\_\_\_

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

BARCLAYSAMERICAN/LEASING, INC. hereby acknowledges receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment as of \_\_\_\_\_.

BARCLAYSAMERICAN/LEASING, INC.

By: \_\_\_\_\_